

Meeting of 2002-12-17 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING  
DECEMBER 17, 2002 - 6:00 P.M.  
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Cecil E. Powell,                      Also Present:  
Presiding                      Bill Baker, City Manager  
   John Vincent, City Attorney  
   Brenda Smith, City Clerk  
   Col. Puckett, Fort Sill Liaison

The meeting was called to order at 6:15 p.m. by Mayor Powell. Notice of meeting and agenda were posted on the City Hall notice board as required by law.

ROLL CALL

PRESENT:                      Randy Bass, Ward One  
   James Hanna, Ward Two  
   Glenn Devine, Ward Three  
   Amy Ewing-Holmstrom, Ward Four  
   Robert Shanklin, Ward Five  
   Barbara Moeller, Ward Six  
   Stanley Haywood, Ward Seven  
   Michael Baxter, Ward Eight

ABSENT:    None.

AUDIENCE PARTICIPATION:

Carl Bertoch, 5302 NW Elm, said he was here to address Resolution No. 02-183. He said he requested three-way stops at 53rd and Columbia and 53rd and Meadowbrook but the City instead decided to put in a warning sign to slow traffic to 25 mph as they come around a bend by his house. Bertoch said he did not find this solution to be feasible because the 25 mph is a warning sign with no legal enforcement for the police. He asked that another study be done to legally lower the speed limit to 25 mph. He said people will be landing in his front yard and hitting his house, and an insurance claim is pending on the last one.

Mayor Powell said the police have paid particular interest to that street according to the reports he had seen. He said he hoped that would continue, as well as looking into the matters Bertoch spoke of.

CONSENT AGENDA : Separate consideration was requested for Items 2 and 5.

MOVED by Bass, SECOND by Baxter, to approve the Consent Agenda items as recommended with the exception of Items 2 and 5. AYE: Moeller, Haywood, Baxter, Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin. NAY: None. MOTION CARRIED.

1.    Consider the following damage claim recommended for denial: Chris Brady. Exhibits: Legal Opinion/Recommendation. Action: Denial of claim.

2.    Consider accepting PinHigh's Option 3 proposal, as modified, to install benches with advertising, covers and additional handicap concrete pads and authorizing the execution of a contract for five years with annual fee of \$25.00 per location. Exhibits: Summary of Proposals; Drawing of PinHigh's Option 3.

Vincent said PinHigh Investments was a corporation trying to be formed by Mike Brown and Hossein Moini but that corporate name is already being used so they will have to change the name. He recommended awarding the contract to Mike Brown and Hossein Moini and adjusting the contract to allow them to assign it to their successor corporation after it is formed. Mayor Powell asked if all other conditions would remain the same. Vincent said yes.

MOVED by Baxter, SECOND by Hanna, to approve as stated by the City Attorney. AYE: Haywood, Baxter, Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller. NAY: None. MOTION CARRIED.

Recommended Action was to accept PinHigh's proposal to install benches with advertising, covers and additional handicap concrete pads and authorize the execution of a contract with PinHigh for five years with an annual fee of

\$25.00 per location by the Mayor and City Clerk.

3. Consider an amendment to the Project Impact Saferoom Rebate Program related to prohibiting the incentive on shelters/saferooms in designated floodplain area. Exhibits: Proposed Amended Criteria; Agenda Item Commentary of 9/24/02. Action: Amendment prohibits rebates on properties in the floodplain; notes a cumbersome process involving structures more than 45 years old.

4. Consider an amendment to the Project Impact "Code Plus" Home Rebate Incentive Program related to changing the design requirement for windows. Exhibits: Letter from LHBA; Proposed Amended Criteria; Agenda Item Commentary of 9/24/02. Action: Approval of stated amendment.

5. Consider accepting the 12-inch waterline located along SW 11th Street to serve the City of Geronimo, escrow agreement in lieu of completed improvements, and maintenance bond. Exhibits: Map.

Bob Bigham, Planning, said staff has been diligently working with the City of Geronimo in trying to get the 12-inch water line accepted and get their water turned on. The water line is complete, some minor items remain, and a \$7,500 cash escrow agreement has been provided. Lawton was to pay 36% of the cost of the 12-inch line between the interstate on 11th Street to the south end of the landfill. Lawton transferred \$63,000 to Geronimo under the agreement. Geronimo has a claim in for the final payment and the money Lawton owes Geronimo has been used in lieu of making that payment, so \$7,500 will be withheld from the final payment, as well as \$5,800 for inspection fees. Bigham said the remaining item is a two-year maintenance bond of 15%. Geronimo had contracted for a one-year bond with their contractor and there are some issues with the bonding company. Bigham recommended accepting the water line contingent upon the submission of the maintenance bond as required by the agreement and City Code.

Shanklin asked if Geronimo would be denied water for six months if the bond takes that long. Bigham said staff contacted two bonding companies and met with Geronimo's attorney, and a solution may have been found so it should not take that long, but if that be the case, yes, we would have to hold turning on the water until that requirement is met. Shanklin asked if we could simply turn off the water if the line fails and wait for repairs to be made. Bigham said there is no agreement to that effect and once the line is accepted, it will be Lawton's responsibility; the City Code requires acceptance of a two-year maintenance bond for those potential defects.

Shanklin asked where Lawton's portion of the line ends. Bigham said at the southwest corner of the landfill at Tinney Road. Shanklin said we would not continue to let the water run if the line was broken. Bigham said the only concern is in accepting the 12-inch line from the southwest corner of the landfill up to north of the interstate on 11th Street, and the recommendation is to accept it contingent on getting the bond and hopefully that can be done within a few days; if that cannot be resolved, perhaps another alternative can be looked at during the first Council meeting in January.

MOVED by Haywood, SECOND by Baxter, to accept the 12-inch line from the interstate to Tinney Road with the contingency as stated by Mr. Bigham.

Steve Mallow, Mayor of Geronimo, said he appreciated the concern and patience and that this has been a long, drawn out project. He said Lawton's staff had really worked well with them and even took samples. Mallow said the issues they had with one of their contractors had caused some problems and he apologized for that. He said this is a worthy project for Geronimo and Lawton, and it will benefit both communities.

VOTE ON MOTION: AYE: Baxter, Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood. NAY: None. MOTION CARRIED.

6. Consider approving the purchase of a parcel of land for the Flower Mound Road (Lee - Gore) Project, authorize the Mayor and City Clerk to execute the Temporary Easements and Warranty Deed and authorize payments for same. Exhibits: None. Action: Approval as stated for the Anderson property.

7. Consider awarding a contract to C.R. Gann Demolition, Inc. for the Meadowbrook Demolition Project #2002-18. Exhibits: None. Action: Award in the amount of \$67,400.00.

8. Consider approving Change Order No. 1 for the West Industrial High Zone Pump Station #1 Project #2001-20 with Quicksilver Construction Company, Inc. Exhibits: None. Action: Provides a revision in electrical service necessitated by PSO and adds a new 14" water line to allow isolation of the 7 million gallon water tank for maintenance. Cost increase is \$13,861 for total contract amount of \$466,054.

9. Consider approving plans and specifications for the Municipal Pool Renovations Project #2001-22 and authorizing staff to advertise for bids. Exhibits: None. Action: Approval.

10. Consider acknowledging receipt of permits for the construction of sanitary sewer lines from the Oklahoma

State Department of Environmental Quality to serve Sub-Basins 202, 207 and 210 (Squaw Creek Basin) Sewer Line Project, City of Lawton, Comanche County, Oklahoma. Exhibits: None. Action: Acknowledge receipt of Permit No. SL000016020855 for 186 lf of 12" PVC sewer, 2,546 lf of 10" PVC sewer, 6,115 lf of 8" PVC sewer, 12,000 lf of 8" HDPE sewer, and all appurtenances to serve sub-basins shown in title.

11. Consider approving contract for Native American Program featuring Joe and Donna Cross of Leafarow Storytellers January 15-17, 2003. Exhibits: None. Action: Approval.

12. Consider accepting State Aid for Libraries grant of \$43,225 and authorize execution of the contract with the Oklahoma Department of Libraries. Exhibits: None. Action: Approval.

13. Consider approving the following contract extensions: A) Scott Wireless Talk Around Mounted Radio with Wayest Safety, Inc.; B) Rear Suspension Repair with Loden Spring and Suspension, Inc. Exhibits: None. Action: Approval.

14. Consider approval of payroll for the period of December 9 through 22, 2002, and December 23, 2002 through January 5, 2003.

15. Consider approval of Minutes of December 10, 2002, Council meeting. Exhibits: None.

#### UNFINISHED BUSINESS:

16. Consider the following damage claim recommended for denial: Tommy Sims. Exhibits: Copy of Claims Memorandum/Recommendation dated November 12, 2002.

Vincent distributed a point paper of the items discussed when this was first considered by the Council in November. Mayor Powell said Mr. Sims had asked to speak. Sims said he had presented everything in written form and asked if this was dealing with the truck and Mayor Powell said yes.

Frank Jensen, Deputy City Attorney, said Council had been provided a copy of what he discussed two meetings ago and that he had nothing to add but would try to answer questions. Devine and Mayor Powell discussed the City's previous payment of a claim involving a manhole cover. Jensen said the claims are always evaluated the same way, determining whether there was prior notice of a defective condition that needed to be taken care of, and if we do not have that prior notice or should not have had that prior notice, then the City Attorney's recommendations have always been the same, to deny the claim.

Bass said the information shows the manhole cover was not the correct one for the ring and asked who was responsible for that. Jensen said he learned from City staff that when the inspection was done on the work that went up to the manhole in 2001, everything was fine; City inspectors saw the jail contractor working around this manhole and lift this lid, everything seated properly and there were no problems. Jensen said our inspector is qualified to say whether there is a problem or not, and it is pretty obvious when there is. Jensen said the next time we had any reason to have contact with the manhole was when Sims had his unfortunate accident; we sent someone out there immediately and two people said it was the wrong lid. Jensen said he could not tell Council how that came to be, he could not say it was a City staff member, he had no evidence of that, and he could not say it was the jail contractor, he had no evidence of that, but the burden of proof is not on the City; all we can say is that the manhole cover and the ring were in good condition, working properly, seating properly when the work was being done by the jail contractor, and then months later we have the wrong lid.

Mayor Powell said if this thing should go any further, and he had reason to believe that it would, he thought the 3:55 p.m. deal says it all; it says the City crew arrived at the manhole and noticed the cover was not the correct one for the ring, a barricade was put up around the manhole at that time. Jensen said at that time we knew the lid was not seating properly so we were forced to take precautions and had the ring and lid changed out the next day, but prior to that point in time, we did not have notice of a problem.

Ewing-Holmstrom asked if manhole covers are checked periodically. Jerry Ihler, Public Works Director, said the cleaning program mandated by EPA is once every five years, but manholes are also checked if anyone reports a problem. Ewing-Holmstrom asked if five years seemed like a long time. Jensen said it has been a very long time that the cover and ring have been there without any reported problems.

Shanklin said the claim has been reduced to \$7,179, and it includes the cost of repair and loss of use; claimant has requested diminution of value in the additional amount of \$6,400. He said if the claimant was requesting \$500, he would move to approve it. Baxter said it was \$6,400 plus \$7,179. Jensen said the claim was for repair cost of \$6,000 plus, loss of use of \$400 or \$500 for a rental, and then depreciation of \$6,000 plus, or a total amount of roughly \$13,000 to \$14,000.

Shanklin said he moved to deny this last time and he thought it was denied and because Mr. Sims is an attorney,

and we have a staff of five, and he thought he could win this thing in the court and he thought that was where it needed to go. He said he certainly could not go for \$13,000.

MOVED by Shanklin, SECOND by Baxter, to deny the claim as staff recommends and let Mr. Sims pursue it in District Court.

Sims said he thought depreciation of value was a viable claim because several years ago he took a claim to the Oklahoma Supreme Court on former Fire Chief Barrington's daughter who was an employee of his at the time. He said it was a new argument before the Supreme Court on the fact that a car that has been wrecked and repaired depreciates in value. Sims said if find two trucks that are the same except that one has been in an accident and has been repaired but they both cost the same, which one would you buy; they will have to reduce the price of the previously damaged truck to make it enticing for a person to buy. Sims said Charles Brown, Lawton Auto Parts, is present and if he spoke before Council, he would say that a warning sign comes up at the Dallas car auction and a potential buyer must be informed of frame damage.

Sims said we know from the comments by the City Attorney's office and by the pictures that there was recent activity where the road had been cut and a water line placed back up to the new jail. He said his argument was that he would be willing to bet that a permit is required before cutting a City road, and that inspections would follow. He said the evidence will circumvent around that this water line or whatever was cut and it is about four foot wide, a black asphalt strip right up from that manhole cover straight up to that jail, that was done in the same proximity in time. Sims said the big issue is that there was activity in that area in the same time. He said a statement was made that we have notice or should we have had notice and the key was you should have had notice at that time that something was going on, there were inspections and part of that inspection process was to make sure the proper manhole cover was on that hole.

Bass asked if Sims had to have the frame straightened. Sims said he had not done it yet, it is still bent, Lawton Auto Parts put the cross member, the transmission cross member, which took severe damage, it bent the right, the left side main frame member. Sims said the truck was a one ton duly and it caught the rear end housing, bent the shock mounts and those have not been replaced, the frame has not been straightened, it is not economically feasible to dismember the truck and put a new frame under it. He said he was raised around Sims Auto Salvage junkyard and it put him through law school.

Bass asked if the \$13,579 was the difference of what the pickup is worth from the black book. Sims said yes and he had presented the NADA values, the \$7,000 plus is for the actual repair of the frame, the rear end housing, labor and down time; the 20% is the depreciation of the value the truck will suffer if he tried to sell it because he must give a statement that it has a bent frame. Sims said one of the problems with the truck is the vibration and a shake in it that it did not have before and that is probably the biggest complaint at this point. Sims said it is drivable and in his opinion it is not perfect.

Haywood asked if Sims would accept \$7,179 total. Debate was held regarding whether a claim should be negotiated on the Council floor and Mayor Powell said it would be out of order as far as Haywood's question but offered Haywood the opportunity to make a substitute motion.

SUBSTITUTE MOTION by Haywood, SECOND by Devine, to pay him \$7,179 total payment and adopt Resolution No. 02-225. AYE: Bass, Hanna, Devine, Ewing-Holmstrom, Moeller, Haywood. NAY: Shanklin, Baxter. SUBSTITUTE MOTION CARRIED.

17. Consider an ordinance altering the corporate limits of the City of Lawton, Oklahoma, by de-annexing the west of Section 17, Township One North (T-1-N), Range Twelve West (R-12-W) and declaring an emergency. Exhibits: Ordinance No. 02-49; Letter from Attorney for Cotton County RWD 2.

Vincent said after the City annexed Section 17, Mr. Sims requested deannexation of his portion. After discussions with Cotton County Rural Water District No. 2 (letter from Mike Flanagan is attached) they have been advised that they are not going to deannex the west half of Section 17 which puts a question mark on Lawton's ability to sell water into that west half section because they already have service into the west half section. There have been a couple of new cases that have come out since May dealing with that issue and there is still one on appeal to the Tenth Circuit Court. Vincent recommended deannexing the West half section and declaring an emergency in the ordinance.

MOVED by Haywood, SECOND by Baxter, to adopt Ordinance No. 02-49 and declare an emergency.

Bass asked if the County would own the roads. Vincent said yes, the ordinance would include 82nd Street right of way from south of Coombs Road down to Woodlawn Road and from the intersection of 82nd and Woodlawn, it would take the half mile back to the east half section line, all of Woodlawn Road, which would be the south boundary of this half section. Bass asked if Vincent was talking about 67th or 82nd. Vincent said 67th will come up on the Felton Dean situation.

(Title read aloud) Ordinance No. 02-49

An ordinance detaching certain parcels of land from the corporate limits of the City of Lawton, Oklahoma, thereby altering, diminishing and re-establishing the corporate limits of the City of Lawton, Oklahoma, and declaring an emergency.

VOTE ON MOTION: AYE: Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

#### BUSINESS ITEMS:

18. Hold a public hearing and consider an ordinance amending uses permitted and uses permitted on review and establishing height restrictions in the Public Facilities District. Exhibits: Ordinance No. 02-50; Letter from C. E. Wade, Jr. (CPC Minutes on file)

Bob Bigham, Planning, said this was requested by Chuck Wade representing the Lawton School System, which advertised closed school sites for sale and the request was to provide more leniency for prospective bidders. He said after numerous meetings with Memorial Hospital, the schools and a Planning Commission sub-committee, a compromise was reached as shown in this ordinance. Bigham said the ordinance divides public facilities into three sections; permitted uses on tracts located adjacent to arterial streets containing at least five acres, then permitted uses on tracts less than five acres which would be the school sites located in residential neighborhoods, and uses permitted on review regardless of size. A height limitation is included for tracts less than five acres. Attorneys for the school system and Memorial Hospital are present.

Devine said Item 26 says television and radio stations are permitted uses, and asked if that would include a tower and if it would remove a height restriction for that. Bigham said it would apply only to the category of five acres or more located on an arterial street but not the interior, residential areas.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Haywood, SECOND by Moeller, to approve Ordinance No. 02-50, waive reading of the ordinance, read the title only.

(Title read aloud) Ordinance No. 02-50

An ordinance pertaining to planning and zoning, amending Sections 18-5-7-571 and 18-5-7-572, Article 5, Chapter 18, Lawton City Code, 1995, amending uses permitted and uses permitted on review in the P-F (Public Facilities District); amending Section 18-5-7-575, Article 5, Chapter 18, Lawton City Code, 1995, establishing a height restriction on tracts less than five (5) acres in size in the P-F (Public Facilities District); and providing for severability.

VOTE ON MOTION: AYE: Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

19. Hold a public hearing and consider an appeal of the decision of the Building Development Appeals Board on an application for the erection of a communication tower at 3802 NE Cache Road. Exhibits: Letter of Appeal; Map; Original appeal to Building Development Appeal Board.

Mike Jones, Community Services, said in July 2002 Zone Systems applied for a building permit to construct a telecommunications tower at 3802 NE Cache Road. The permit was denied based on the Lawton City Code, Section 6-8-804A3 which states that towers shall not be constructed or modified within a radius of one mile from other towers constructed and placed, erected or modified after February 1997. The existing tower was modified in October 1997, so this would apply as the proposed tower is to be located within 4,000 feet of the existing tower.

Baxter asked if the same company owns the existing tower that is planning to build the new one. Kevin Greer said Frank Richards owns the land where the existing tower is at and U.S. Cellular has the tower.

Moeller asked what kind of problems come up if the towers are closer than one mile to each other. Jones said he thought it was just basically aesthetics and a way of spacing out the towers. Mayor Powell asked if the Code stated the towers cannot be closer together than one mile and Jones said yes. Mayor Powell asked how it could be approved if it is closer than one mile. Ewing-Holmstrom asked if the City Code could be changed. Vincent said the City Code can be amended but not tonight, and since this is in Chapter 6, it has to go before the Building Review Board and there is a process it goes through. Jones said it has already gone through that. Vincent said he was speaking of the amendment to the Code.

Mayor Powell asked how they can do this when the Code says you cannot do it. Jones said that was why the permit was denied and why the Building Development Appeal Board upheld that denial. Vincent said they have a right

under the Code to file for an appeal and he did not know how you could do this either but under the Telecommunications Act, we must provide an appeal mechanism. Mayor Powell said it seemed like it was set in concrete.

Baxter said he did not understand how it got this point if we have an agenda review committee that if it cannot be done, how did it get here, how did it get past the agenda meeting. Baker said the Building Development Appeal Board denied it and from what he gathered, that could be appealed to the City Council. Vincent said the Code provides for the appeal to the City Council. Baker said whether the Council can legally do anything different from what the Code says, obviously you cannot. Baxter said they did on a billboard situation on Interstate 44. Shanklin asked if Council would be doing this on all codes or just this one and can they deviate on all of them.

Ewing-Holmstrom asked why the Building Development Appeal Board denied the appeal. Shanklin said it is an arbitrary figure in the City Code. Ewing-Holmstrom asked if Council wanted to hear from anyone from Verizon to consider changing the Code. Shanklin said Vincent is very good at being able to work through and around and in between our resolutions and everything else, what happens if we pass it anyway. Vincent said if you allow the variance, it will be allowed; you are the legislative body, the Code says it has to be a mile or more away and you establish the Code and they have a right to appeal to you by Code and request this variance. Mayor Powell asked if it would have to be done in that order, to appeal the Code. Vincent said this is the appeal, and Randy Henning has done all of the research on this if there are specific questions about the appeal process and what Council powers are. Mayor Powell said this is the appeal of the decision of the Building Development Appeal Board on the application of the tower, so it is an appeal of an appeal but not to amend the Code, and he was asking if the procedure should be change the Code. Vincent said that is a possibility, yes. Shanklin asked what the other possibilities were.

PUBLIC HEARING OPENED.

Peter Cavanaugh, 1620 Handley Drive, Dallas, representing Verizon Wireless and the owner of the property, Keegan Ledford, said they are appealing the November 7 decision of the Building Development Appeals Board; the provision they are using is in accordance with Section 6-7-1-705 of the City Code. He said people demand that their cell phones work and for that to happen, they must put antennas throughout the community. Cavanaugh said the code section was good requiring towers to be a mile apart because you do not want towers all over your community, you want companies to go on existing structures every time they can, and one way to push them into that is to have the mile separation rule.

Cavanaugh said they had a number of sites under construction in Lawton that will be on existing towers. He said they tried to use an existing AT&T tower near Lee Boulevard but it failed structural analysis, meaning the tower was not strong enough to add another carrier, so they went to the same board and appealed the rule that said the new tower they were going to replace or add in the area has to be a mile away, they were less than a mile away, they appealed that and the board approved it. He said on the same day, they had this situation; there is a US Cellular tower there that failed structural so they cannot put their equipment on it so they have to find an alternate location.

Cavanaugh said the first thing they did, and he forgot the man's name but it was said a few minutes ago, was to go back to the land owner leasing for the US Cellular tower and he said sure, come on over, but you have to go way to the west; the problem is for this system to work, their antennas must be strategically located throughout the community, the antenna really needs to be a little east of here, we were able to make the system work on the existing tower but the tower did not work because of structural analysis so they have to build a new tower. They moved just a little bit north and east, really closer to where they needed to be, they are staying off of the road because you generally want to be able to develop in front of the tower along the road. He said the tower is over 200 feet from the east road, over 300 feet from the south road, they are in an area that is agricultural which permits the tower, the only thing they had a problem with was that one-mile rule.

Cavanaugh said the Code wisely recognizes that there may be a problem with that and provides for an appeal of anything in the tower section for the Building Development Appeal Board to look at problems that come up as a result of the Code; this problem came up, we went to the Appeal Board, they approved one situation and did not approve the other.

Mayor Powell asked which one they approved. Cavanaugh said they approved one near I-44 and Lee and it was the same situation; they approved that tower which would violate the one-mile rule also; they did not approve this one.

Cavanaugh said there were a number of structures they tried to go on; two of them failed structural, so they are putting their own structure up, and the most recent case of a structure they are able to use is a City water tower on Cache near Goodyear and they are working with the City now regarding locating on that structure. He said their antennas have to be up off the ground; if there is a structure near where they need to be and they can go on it, they will do that. Cavanaugh said a third structure failed analysis on Sheridan Road but in that case they can go on the Coop grain elevator, so they are trying to follow the one-mile rule, which is a great rule. Mayor Powell said it is a

good rule but they just need a break and Cavanaugh said that was correct.

Col. Puckett asked the height of the proposed tower. Cavanaugh said 190 feet and you have to go over 200 feet before you have to light a tower for FAA purposes so there will be no lights on this tower.

Vincent said to answer Shanklin's question, a variance can be granted to the distance issue, and to grant the exception, it must be demonstrated by the applicant, Verizon, that the separation distance set forth in the section will have an effect of preventing service to the area of the City, constitute a barrier to entry into the market place or will constitute a technical hardship. He said a variance can be granted to the distance separation as part of the Code.

Ewing-Holmstrom asked if Verizon currently serves Lawton. Cavanaugh said he did not think the service was on yet. Ewing-Holmstrom said she recently had to change her cell phone service because she lives on 46th Street and could not get cell phone service. She asked what kind of economic impact Verizon would bring to the community, what kind of sales tax dollars are to be expected. Cavanaugh said they would pay property improvement taxes on the facilities and equipment and the equipment is about \$500,000 per site; he did not know what Lawton did as far as taxing cell phone service and you should probably have a 911 tax so the cell phone users pay for part of the 911 system fee, which is pretty universal now.

Keegan Ledford, 3802 NE Cache Road, said Verizon contacted him about putting up a tower on his land. He said it is out as far as possible, in a pasture, on the City limits. Ledford said it was keeping away from the structures around there. Ledford said the appeals board tabled the matter first and then when it was turned down, 95% of the people there were living in Quail Run, which is outside the City limits. He said a few months ago he went to the meeting at MacArthur Junior High when the City was trying to do the annexation and those residents said they were not interested in coming to town, and they did not want any part of that, there was nothing Lawton had to give them, so the City backed off of that, but now they are trying to do something inside the City limits and we are getting the county's opinion on what we need to be doing, and that is probably the only thing he did not think was right.

Moeller said there may be a need to look at where all of the towers in the City are located to see if it can be done better.

Ledford said the appeal board is a good process and you get the county's input and people's opinions and then if it does not work out, the appeal comes before the Council, so the process is good.

Philip Aday, 4814 NE Bell, in MacArthur Park, said he is building a custom home at 1602 NE 45th Street, approximately 100 yards directly north of this proposed tower site. He said he owns 30 acres in that quadrant which are developable acres and he was strongly opposed to the construction of a tower literally in his back yard that will spoil the community view and taint the land for future home development, which is a possibility on the 30 acres.

Aday said Cavanaugh said they would have preferred a site further east and there is a City water tower further east on E Cache Road. He said he would like to know if that site had been considered or if it was a matter of expediency and where they can build for the least cost. Aday said if they are wanting to get a variance for economic expediency, he thought it was very short sighted to allow them to build a tower within the City that will put a blight on future development in that area as far as housing. He said the minor dollars that the site would bring in from tax revenue would pale in comparison to the future development potential of that area.

Eric Mortensen, 4205 NE Pheasant Way, Quail Run Estates, said he sent the Council a three-page memo and the opposition to the tower is that everyone agrees that it will be an eyesore, it will be a permanent eyesore, 190 feet tall is almost as tall as a 20-story building, it is on the edge of the City limits and directly across from their neighborhood.

Mortensen said they are not technically citizens of Lawton but their future is tied to the Lawton community, they all work here, all have committed to be here, all have bought property here and their property values will diminish if this tower goes through. He said that he and Kevin Greer had polled the neighborhood and their opposition was 100% and several people were present for the previous hearing.

Mortensen said they believed the City Code provisions were good, they had been in effect for six years, and if you put towers on a one-mile grid square, there would be 16 within two and a half miles of your position anywhere you go, so that is actually fairly generous, and it should not be changed for more; it is the policy and it should be upheld. He said the Code also says towers should not be in residential areas and that was likely to forestall discussions of this sort, and they assert that they are a residential area, there are about 25 houses there and a possibility of more. Mortensen said it is open farm land and about a half a mile to the west is Heritage Hills and if further development occurred there it would likely be residential.

Mortensen said the efforts so far have not been toward co-locating with the tower at MacArthur School, nor have they adequately considered putting an antenna on the City water tower a mile and a half to the east on Cache Road; those are two very viable options. He said from the hilltop in Quail Run, there are at least six other towers that are visible and all of them could potentially provide a site. Mortensen said they were not sure why it was necessary for Verizon to put a tower on that specific site.

Mortensen said directly to the north of them is the Fort Sill east firing range, and there will be no development there; to the east there are only a few people out in the county. He said the proposal is to have the tower on the northeast corner of the City of Lawton that will obstruct their view and of the land area will not be useful. Mortensen said interests are best served by maintaining the consistency of the City Code; people will not come to town and invest in real estate if the Code is changed willy nilly.

Kevin Greer, 1402 NE Quail Run Boulevard, said he contacted the land owner where the current US Cellular tower is located, his name is Frank Richards. He said Mr. Richards said that Verizon had not contacted him or made an offer but that he would be very interested in leasing property for the purpose of building a second communications tower. Greer said they did not feel an effort had been made to locate this tower in a more compatible area; if a second tower were built next to the existing tower, that would handle any requirements they have brought up and they should at least have contacted Frank Richards and made him some type of offer but he said he had not been contacted.

Greer said at the November 2 meeting the land owner of the proposed site was asked by a board member if he would have a problem locating the tower several hundred yards to the west but on land that he still owned. He said the land owner replied no, he would not want that in his back yard, and Greer said he understood that feeling.

PUBLIC HEARING CLOSED.

Shanklin said there is a tower in the City Hall parking lot/annex building and another at 2nd and Euclid that was put up about three years ago, and that is not a mile apart and it was not a big issue then.

Moeller asked the height limit before they get into airline traffic. Mayor Powell said the representative said it was 200 feet. Col. Puckett said he was concerned because it would start developing what they call a restricted operating zone for rotary wing aircraft, and primarily it will be medivac aircraft and restricting the air space they can use and they would have to see what it would do being a mile away from Fort Sill.

Shanklin said a tower is located behind 38th and Cache Road in a residential area and it did not bother anyone on staff when that was done.

MOVED by Ewing-Holmstrom, SECOND by Devine, to approve this.

Ewing-Holmstrom said she thought Council was in agreement to allow it, and even the appeals board had allowed another one.

VOTE ON MOTION: AYE: Ewing-Holmstrom, Shanklin, Haywood, Baxter, Hanna, Devine. NAY: Moeller, Bass.  
MOTION CARRIED. (\*Note: Haywood passed on initial roll call.)

20. Consider receiving a briefing on the National Pollutant Discharge Elimination System (NPDES) Phase II storm water program as a part of the Storm Water Mitigation Master Plan Project #2002-8 from Carter and Burgess, Inc. and providing direction to staff as appropriate. Exhibits: None.

Ihler said in August the City entered into an engineering contract with Carter and Burgess regarding the Storm Water Mitigation Master Plan; 75% of the funding for that program comes from a grant funded by FEMA. The professional services for the grant are to update the current FEMA flood insurance rate maps and prioritize recommendations for improvements to areas with flooding problems. The majority of this presentation will deal with the development of a National Pollutant Discharge Elimination System Phase II Storm Water Program, which EPA mandates for all communities under 100,000. The City must fund this mandate and the presentation will include some costs and as we go through the budget process next year, Angie Alltizer, who will be overseeing this program, will likely have some issues brought before Council to relate to the cost of the program. He introduced Bart Hines and Steve Veal from Carter and Burgess.

Bart Hines, Senior Project Manager, Carter and Burgess, and manager for this project, said he is joined by Steve Veal, Senior Vice President of Carter and Burgess, who is also working on the NPDES Permit, as well as two other staff members working on this project. He said they are professional engineers and are proud to serve the City of Lawton. Their power point presentation is summarized as follows:

Hines said they would be looking at an overview of the scope of work, phase two glossaries, background of the storm water requirements, Phase II NPDES or OPDES requirements, six basic program requirements, and the



program cost estimates. Information on the slide presentation was distributed.

Hines said the storm water mitigation master plan was a two-part scope; part one was the update of the flood plain mapping, evaluate and prioritize improvements to the City drainage system and that project is now underway. Part two is to develop the City's NPDES storm water management map program and submit the permit application to the State. The update of the hydrology mapping is 90% complete. A report was given to staff earlier today on the update of mapping for Squaw Creek, the main channel of Wolf Creek, West and East branches of Wolf Creek, and East Cache Creek. Along with flood plain mapping on current conditions, they will map the ultimate development conditions, which will be basically saturating that area to see what a flood plain map would look like in that state.

Hines said staff has identified 20 problem areas around the City and they will look at them, determine the flood plain analysis and develop solutions to those problem areas, then prioritize a CIP listing for the City to consider during the next budget cycle.

Steve Veal said the regulation has been in effect for several years; the portion that impacts Lawton is fairly recent. A glossary of terms for the federal regulation was included. They will obtain an Oklahoma Pollutant Discharge Elimination System Permit for Lawton; this is the same type of permit as the Wastewater Treatment Plant has or for any other type of discharge into water in the State. The other term is MS4; Lawton's storm water system in the eyes of EPA is a municipal, separate storm sewer system.

Veal said the run off from rain or snow into the storm water system, creeks and river is storm water. Congress and EPA feel it is necessary to regulate this because storm water has many of the same characteristics as domestic wastewater, such as metals, bacteria, a wide variety of pollutants that cause impairment to the nation's water ways. At this point, much of the pollution is from storm water runoff. EPA has done many studies showing specific issues and problems in some cities such as illegal connections to the storm drainage system. To some extent these problems exist in Lawton as they do in a Phase II cities that must now get these permits. Cache Creek is listed on a State impaired waters list, which is not necessarily overly alarming, and there are streams across the state and nation that are on such lists.

Veal said the regulations originated with the Clean Water Act amendments of 1987. Congress established a two-phase program; phase one was designated for large and medium cities such as Oklahoma City, Tulsa, Dallas, and San Antonio. Construction sites over five acres also had to get permits under the original Phase I program, as well as most types of industrial activities. Phase II is more recent and includes smaller cities in a census defined urban area of which Lawton is one, and construction sites down to one acre. Most Phase I cities have had permits for quite some time. In September, ODEQ released a preliminary permit, not for comment yet but just for review. In December they were scheduled to release it as a proposed rule making but they will not make that schedule and it will probably be March or April before the permit is actually released. The "catch 22" is that the permit application is due in March; there is some indication that this deadline may be extended further but right now the permit application is due in March.

Veal said the larger cities had detailed requirements to meet that were very expensive; the Phase II program is simplified and should be cheaper to operate. Phase II regulates small municipal or publicly owned systems in urbanized areas; portions of Comanche County also must be permitted. Construction sites above one acre in size under Phase II must be permitted. An MS4 can mean any kind of publicly owned system so a city-owned system, a county-owned system, the system owned by Fort Sill for example would be considered an MS4, as well as tribal lands and facilities.

Veal showed a map of the urbanized areas in Oklahoma that fall under the requirement and all of the cities within the urbanized areas, if they meet certain population density thresholds they must get permits so that includes all of the cities around the Fort Smith urban area, extending into Oklahoma, Lawton, and the cities around Oklahoma City and Tulsa. In this area it will include Comanche County and Lawton. The urbanized area boundary is based on census data, not the city limits, so the two do not necessarily match up, and we are dealing with strictly the urbanized area as defined by the Census Bureau.

Veal said ODEQ was scheduled to release the permit this December, that is not going to happen and it will probably be March or April, if then, when it is released. He said you have five years to comply with the EPA requirements, the permits are issued for five-year terms, giving you time to get the program going. There is misconception about construction sites; regardless of city size, construction sites over five acres have required permits since 1990 and many do not realize that. Phase II cities have been exempt from getting permits for City sponsored construction activities but that all goes away with Phase II and any kind of City sponsored construction activity will now have to get its own storm water permit and any kind of privately owned project over one acre in size will have to get a permit as well.

Veal said to comply with the regulations, Lawton must submit a permit application, which is called a Notice of Intent document; complete and implement a storm water management plan and the development of that is part of their consultant scope of this project. Lawton must report annually to ODEQ, which you have done in previous

years, to meet the plan. Permits must be obtained for city-owned industrial activities and city-sponsored construction activities, and depending on what happens with Cache Creek as far as total maximum load development, there may be other requirements but that is pretty far down the road.

Veal said there may be some impact to Lawton businesses and citizens; there will be some ordinance requirements that must be developed for this and citizens will have to comply with those. Any kind of business that falls within an industrial activity code or undergoing construction will have to obtain a permit.

Veal said the storm water management plan must meet three goals: reduce the discharge of pollutants to the maximum extent practical standard, which is EPA regulatory language; they have to protect the water quality and they have to satisfy six minimum control measures. The control measures are that the City must develop a public education and outreach program on water quality and storm water impacts to water quality, which could consist of these so-called best management practices or BMP's. He said some of the items listed are suggested but not necessarily required to be included in the plan; some of the minimum control measures are actually required. EPA suggests targeting specific educational materials for business owners, partnering with the local school district, and having public service announcements on the local media outlets. The public must be involved in development of the program. Prior to Thanksgiving the first set of stakeholder meetings were held with a City-designated stakeholder group and good input was received; regulations require involvement of the public in the storm water program. Other suggestions are having creek clean-up efforts with the citizens or City clean-up days; having specific meetings with business groups that might be impacted by the program, those are examples of appropriate steps.

Veal said a program has to be developed for the control of illicit discharges to the storm water system. An illicit discharge is anything that someone puts in the storm water system that is not storm water, and it could include motor oil, bags of leaves or household chemicals. Lawton must develop a system map with major outfalls; this is a mandatory requirement and the City has most of this already done. The map must be updated annually. The City must have a program for identification and elimination of illicit discharges and the City is doing much of that already with the wastewater program. The City could be required to establish an illicit discharge hotline; an ordinance will have to be developed specifically prohibiting illicit discharges into the storm drainage system. A program for control of construction site runoff also has to be developed, including an ordinance requiring erosion sedimentation controls and some elements of this are already included in construction plans submitted to the City and it may have to be codified further in the ordinances. The City will probably have to devote some sort of inspection resources to the program.

Veal said the next part is to develop a program to control post-construction runoff. Those who wrote the regulations are in Washington, D.C. which has a lot of green space, storm water detention and retention ponds, dedicated stream buffers, impervious area controls, and much of that is required by their local storm water regulations. EPA's anticipation is that Phase II cities will do something similar as they develop their storm water programs; they anticipate cities will look at stream buffer controls and storm water detention/retention systems. Obviously there is a cost to that from the private sector standpoint and the public sector standpoint, and they would look at that in developing the storm water program.

Veal said a program must be developed for control of pollution sources from municipal operations. Much of this will consist of training for City employees on how they use fertilizer on parks or golf courses or how they use pesticides in their jobs, how they fuel their vehicles at the City service center, how road salt and de-icing chemicals are applied. Most will be training but there could be some hard cost structural dollars that have to be applied here as well. There is also a requirement for litter control within the City and looking at existing City flood control facilities to see if they can be retrofitted for water quality purposes.

Veal said the best management practices will be developed and included in the storm water management plan; there is a goal setting process and the goals must be quantifiable and measurable. BMP's can consist of not just structural best management practices, like a silt fence around a construction site, but also programmatic best management practices as well.

Veal said the bottom line as far as what all of this will cost, the EPA estimates \$9.16 per household annually for the program, or about \$3 to \$4 per capita. He said other independent estimates put the cost as low as \$1 per capita or as high as \$10 per capita per year. Most of the Phase I cities are spending about \$10 per year on their program requirements.

Veal said they are about half way through the scope of the project; three weeks ago the stakeholder meetings were held and they will begin the hard work of meeting with City staff, selecting BMP's and working on the harder issues, and preparing the permit application. There are many web sites that provide additional information on this subject and those were listed in the presentation.

Shanklin asked if Wal-Mart had to do any of this. Veal said a Wal-Mart site that is over five acres now will have to get a storm water permit under the Phase I program; in March of next year the limit goes down to one acre, and most Wal-Mart sites are likely over five acres. Shanklin asked if they have to build a detention pond. Veal said it

could be, the regulations for construction are written with some flexibility.

21. Consider extending the length of the reduced speed school zone on NW Fort Sill Boulevard, at Lawton High School, further north to Cache Road to serve the new Central Junior High School. Exhibits: Resolution No. 02-226.

MOVED by Shanklin, SECOND by Baxter, to approve Resolution No. 02-226. AYE: Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: None. MOTION CARRIED.

22. Consider authorizing staff to design and construct improvements for the Fort Sill Boulevard Signal Project #2003-4. Exhibits: None.

Baxter asked what kind of signal light this involves. Ihler said two poles with mast arms with a regular signal light half way between Birch and Cherry; it can be activated by the kids pushing a button to cross; it was moved further to the north of Cherry so we do not have to have mast arms and signals for the intersection of Cherry and the entry way into Lawton Public Schools.

Baxter asked if there is a fence in the median now at that location. Ihler said the fence stops right at Ash, and one of the next items is to extend the median and fence all the way north of Cache Road to Kingsbury. Baxter asked how the kids would cross if there is a fence there. Ihler said there will be an opening at the traffic signal light, as well as at Ash and Birch where cars can still make left turns. Mayor Powell asked if it was close to Central Junior High. Ihler said it is south of the Shoemaker Center.

Baxter asked if they thought the kids would actually use the light and not try to cross at Birch to get to Lawton High and he said surely you do not believe that. Ihler said he believed some kids would try to cross wherever there is an opening but the idea is to provide the least number of locations where kids will cross and hopefully they will go to the signal location.

Shanklin said every kid will be bused and all of the buses will be full. Hanna said this is for the kids that stay after school when buses are not available and this is the least costly way to try to prevent accidents.

Bass asked if Traffic Engineer Consultant, Inc. recommended this. Ihler said the consultant gave two alternatives, the first being \$790,000 which included the overpass bridge at mid way which required purchase of a lot and a house to meet ADA standards; the second alternative was a pedestrian bridge at Cache Road, a traffic signal modification at Cache Road so those who live north and west of Cache Road will be able to cross that intersection to get to the next bridge that would come across if approved; the third item was a mid-block pedestrian signal, which is this item, and another item is to put up the median and fencing. The Mayor's committee did not recommend the in-road school zone lighting.

Bass said if the kids are goofing around and they start to run across the street, they could get trapped on the fence in that road and would have to run all the way back or forth to get out of the way of the cars. Ihler said there would be a three-foot wide concrete median and the fence would be in the middle so there will only be about a foot and a half on each side of the fence if someone tried to cross and got caught there. Baxter said if they try to cross and get stuck, they have to stay there while the cars are going by at 40 mph.

MOVED by Shanklin, SECOND by Hanna, to approve it.

Ewing-Holmstrom asked if this was to approve all four except the bottom one. Ihler said yes, to clarify items one and two, the Cache Road Pedestrian Bridge and the traffic signal modification, that will be another item but this is the actual design for the signal modification and design of the bridge, not the actual construction; once the plans are complete, it will be brought back to Council. This particular item is for the mid-block pedestrian signal only.

VOTE ON MOTION: AYE: Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna. NAY: Devine. MOTION CARRIED.

23. Consider approving plans and specifications for the Fort Sill Boulevard Median Fencing Project #2003-3 and authorizing staff to advertise for bids. Exhibits: None.

Ihler said this is for the plans for the median and fencing running from the existing location where it stops, with the exception for the openings discussed earlier, all the way to about Kingsbury north of Cache Road.

Bass asked if they studied putting the fence on either the right or left side of the road. Ihler said the location of the fence the consultant recommended was in the middle of the road.

Mayor Powell asked why it has to go all the way north of Cache Road. Ihler said students come from the north and west of the intersection of Cache and Fort Sill Boulevard, Traffic Engineer Consultant recommended carrying it to the end of the median to discourage those kids from crossing at unsafe locations. Mayor Powell asked if

consideration was given to doing it south of Cache Road only. Ihler said there was some discussion but the concern was for the students living north of Cache Road.

Mayor Powell said at 52nd and Gore there is a high school, junior high and elementary school without any such fence. He said he was not arguing with the committee but questioned whether it should go north of Cache Road. Shanklin said people will monitor it and everyone is being bused; some will miss the bus and start walking and he thought it was covered pretty good. Shanklin said this situation is a mess but it is not as bad as Mayor Powell just described where kids are running every direction. Mayor Powell said he did not say that. Shanklin said the traffic is faster here than on Gore at 52nd Street.

Bass said vision will be hindered by having a fence in the middle of the street; if the fence were on the right or left side of the street, you would have a clear view of what is in the road and you can stop, but how can you see if the fence is directly in the middle; how can you see the kid trying to cross even if he is standing in the middle. Shanklin asked if Bass could see his cows on the other side of the fence. Bass said it is a barbed wire fence and asked if this was barbed wire. Ihler said it is chain link. Bass said it would be hard to see through. Ihler said the fence is the deterrent for the child crossing at that location, and hopefully the drivers will be aware at the three openings that will be provided that they should really slow down and there will be school markings and it is not a fool proof system but it is the most cost effective.

Ewing-Holmstrom asked if LPS was willing to participate in the funding of this project. Baker said he contacted Mr. Beauchamp and, as many of you know, LPS is having some very serious budget problems, not that we're not, but Mr. Beauchamp informed him that LPS does not have any funds to go toward these projects at this time.

Bass asked how many kids got run over around Eisenhower while the Mayor was teaching and coaching there. Mayor Powell said he did not remember any. Ewing-Holmstrom said she remembered one and it was a child skateboarding on the weekend.

MOVED by Hanna, SECOND by Shanklin, to approve this project.

Hanna said he was looking out for the safety of the children and did not want one child to get hurt or for there to be any liability.

VOTE ON MOTION: AYE: Shanklin, Moeller, Haywood, Baxter, Hanna. NAY: Bass, Devine, Ewing-Holmstrom.  
MOTION CARRIED.

24. Consider approving a contract amendment with Hendrick and Sons, Inc. for additional engineering services for the Central Junior High School Pedestrian Bridge and Signal Improvement Project #2003-2. Exhibits: Amendment to Agreement.

Ihler said this deals with the previous two items, Cache Road pedestrian bridge and traffic signal modification at the intersection of Cache Road and Fort Sill Boulevard. When the committee was discussing the quickest way to accomplish something to protect the children coming to Central Junior High, it would be an amendment to an existing contract with Hendrick and Sons, the consultant designing 38th Street. This item recommends amending their engineering contract to design the bridge and the signal modification; they agreed to do it at a 10% cost of construction, which is estimated to be in the range of \$300,000 so their fee would be about \$30,000 depending on the construction.

Mayor Powell asked if any design had been done yet on the bridge. Ihler said no. Mayor Powell asked if it was necessary to do the bridge, the fence, the openings and the signalization, and he knew they were talking about safety and agreed with that 100%. Ihler said that was the recommendation of the committee as well as Traffic Engineering Consultants.

Baxter said he voted yes on the first couple but would not vote yes on this one; this is too much money.

Bass asked if the committee should have selected one instead of recommending them all. Ihler said Traffic Engineering Consultants gave a presentation at a Council meeting, and their first alternative was \$790,000 and the second alternative, which was the one that was recommended, had a cost of \$385,000. Ihler said these are the items listed in the second alternative, and this was the recommendation of the committee.

Bass said he did not understand why we are doing this after the other was done. Mayor Powell agreed. Bass said the only way not recommended so far would be for a tunnel.

Shanklin said without this, the kids would not have a place to cross on the bridge, they would not walk down to an opening and it would cost more to put tile in the drainage ditch for them to walk to the light to cross. Ihler said the drainage ditch and culvert south of Cherry down to Ash will be a problem. Shanklin said the kids are being channeled across rather than to that area. Ihler said the bridge will serve students north and west of Cache Road

and Fort Sill Boulevard, as well as those within a block of Cache Road.

Mayor Powell asked where the \$335,000 will come from. Baker said the committee recommended that Council approve 2000 CIP funding out of the economic development fund. Mayor Powell asked if that was legal. Baker said yes, we checked with the attorney and it is legal.

Moeller said we cannot solve every problem, we can help, but the schools need to help us with the funding and with a safety program and convince these kids that they are highly allergic to cars. Mayor Powell said that was the reason he was saying how many options we are giving them, the fence, the signal, the openings, then go ahead and build a bridge too, and he did not want to compare safety to money and was not trying to. Moeller said we can do everything in our power and there will be someone who will not use it and get hurt.

Shanklin said the bridge will be used and kids could not be funneled down the creek when it is raining. He said if you get this designed and do not build it, you have not spent \$30,000. Ihler said if you design it and do not build it, then typically the way the contracts are written for engineering consultants is that we pay them based on the estimated cost for the construction if it never gets built so technically you would probably spend that \$30,000. Shanklin said we built a \$13 million school, let's don't not put the hat on it.

Bass asked if this would just cross Fort Sill Boulevard. Ihler said this bridge, yes, it will be adjacent just south of the Cache Road bridge where the cars travel. Bass asked how you are going to get them across Cache Road. Ihler said the traffic signal modification is for them to be able to cross at the signal, and that is not to say there will not be children further west trying to cross Cache Road and we cannot control that.

Baxter said he had a question for Shanklin since he was the bull in the china shop behind building this school at this location and asked Shanklin if he realized this would cost us almost half a million dollars to get kids across the intersection. Shanklin said he would not sit there and lie to you and say he did not think about that, and he did not know when we started 911 that it would create the havoc that it did. Mayor Powell said this is in Hanna's ward.

MOVED by Hanna, SECOND by Haywood, to approve this plan.

Moeller said the kids who live north of Cache Road are not going to go down here to cross the street. Hanna said the bridge at Cache Road goes west and comes in the back way or else they will have to go all the way to Ash and Cherry.

SUBSTITUTE MOTION by Bass, SECOND by Ewing-Holmstrom, to deny this and wait until the funding from the school and the funding from the city is, both of them have more money, and maybe at a later date we will have a better chance to do this. AYE: Baxter, Bass, Ewing-Holmstrom. NAY: Moeller, Haywood, Hanna, Devine, Shanklin. SUBSTITUTE MOTION FAILED. (Note: Moeller passed on original roll call.)

VOTE ON ORIGINAL MOTION: AYE: Haywood, Hanna, Devine, Moeller. NAY: Baxter, Bass, Ewing-Holmstrom. ABSTAIN: Shanklin. MOTION CARRIED. (Note: Shanklin passed on original roll call.)

25. Consider approving plans and specifications for the Fire Station #5 Relocation Project #2000-17 and authorizing staff to advertise for bids. Exhibits: None.

Ihler said the voters approved construction of a new fire station as part of the 2000 CIP. Plans have been completed by Mr. Atkinson, GBA Architects, and this item is to approve those plans and authorize receiving bids. The architect is present regarding the design.

Shanklin said he wanted to hear the Fire Chief say that they agree to the plans. Gary Brooks, Assistant Fire Chief, said they agree. Shanklin said he took the plans to the Fire Department and they had a discussion and asked if they had any input or not, and if they like the way it is designed. Brooks said yes.

MOVED by Devine, SECOND by Moeller, to approve the plans and authorize staff to advertise for bids.

Baxter asked if there is enough money left in the fund to pay for this. Baker said we think we do but we have not received the bids yet.

VOTE ON MOTION: AYE: Bass, Devine, Shanklin, Moeller, Haywood. NAY: Baxter, Ewing-Holmstrom. OUT: Hanna. MOTION CARRIED.

26. Consider approving a resolution authorizing and calling for an election in the City of Lawton, State of Oklahoma, for the purpose of setting dates for the 2003 primary and general municipal elections of the designated City Council seats, setting a ballot title; and authorizing the Mayor to issue an election proclamation. Exhibits: Resolution No. 02-227; Election Proclamation.

MOVED by Moeller, SECOND by Baxter, to approve Resolution No. 02-227.

Shanklin said on January 14 we are voting on Waurika, and asked if it cannot be done in March with this because of the time frames involved. Vincent said the Waurika contract deadline is prior to this.

VOTE ON MOTION: AYE: Shanklin, Moeller, Haywood, Baxter, Bass, Devine, Ewing-Holmstrom. NAY: None. OUT: Hanna. MOTION CARRIED.

27. Consider approving an amendment to the agreement between the City of Lawton and Lawton-Fort Sill Habitat for Humanity, Inc. dated September 24, 2002. Exhibits: None.

MOVED by Baxter, SECOND by Bass, to approve the amendment to the agreement. AYE: Moeller, Baxter, Bass, Devine, Ewing-Holmstrom, Shanklin. NAY: None. ABSTAIN: Haywood. OUT: Hanna. MOTION CARRIED.

28. Consider establishing criteria for membership of the Boathouse Fee Committee and provide direction of composition. Exhibits: None.

Mayor Powell said at the last meeting it was simply stated to appoint a committee and kind of described who it would come from as far as representation and we need more direction; Shanklin suggested that. Shanklin said he brought this back because the motion was to table so you can put a committee together. He reviewed the last action saying it was that anybody can be on the committee that wants to, Hanna seconded it, and he (Shanklin) said the issue is what is a fair market value and that was what we tabled was what is the fair market value and it did pass.

Shanklin said he did not know how you would select a committee of people with boathouses and put them in it; we are asking for fair market value, that was the agenda item. Mayor Powell said he did not think anyone disagreed with that. Shanklin asked how you would establish the fair market value with people who have boathouses. Mayor Powell said he did not hear who would establish the committee and that was why he had not taken any action, but what he heard that evening was that representation would be from boathouse owners with someone representing those with the smallest amount being paid and others with the largest amount being paid, and that was the only criteria he really heard. Shanklin said it was that Hanna wanted to see people from the \$128 price to the \$600 price, and he did not know what kind of people you would get there for that but he did not know how you would establish a fair market value by putting people on the committee who have boathouses and that includes Mr. Bass.

Bass asked if Shanklin wanted people who do not own boathouses and if he wanted to be on it. Shanklin said he did not have that knowledge, and all he knew was that we are renting 30 preferred space sites for \$1,920 per year at Robinson's Landing, and a young man told him today that he had a \$40,000 boathouse but if it was not sitting at Lake Lawtonka it would not be worth \$5,000; we own the land and the water and that is the attraction. Shanklin asked how we can continue to charge those people \$1,920 if we are going to let the boathouse people in it for \$400, \$500 and \$600; we would have to cut that in half. Shanklin said if you are asking for the fair market value, 99.99% of the people do not have access to the Schoolhouse Slough, and 99.99% of the people do not want to see us give our assets away, and if we leave it at that price, or anything near that price, we are giving our assets away.

Ewing-Holmstrom asked if Shahan could look into the way this is done in other areas in Oklahoma. Mayor Powell said he heard that Shanklin did not want anyone on the committee representing the boathouses. Shanklin said he did not want the fox in the hen house, no. Ewing-Holmstrom said staff should check with other lakes in Oklahoma to see how they determine prices. Shanklin said if you bid on it, you will get it; they are getting \$1,900 per space for 30 spaces at Robinson's Landing. Ewing-Holmstrom said maybe they have a better method somewhere else and they can help us figure out a fair market value. Mayor Powell said the item tonight is the criteria for naming this group and he asked for direction.

Bass said if you do not want boathouse owners on it, he did not have any idea who should be on it. Shanklin said the issue is fair market value and asked if the boathouse owner knows the fair market value. Bass said he and Shahan were talking about it and trying to get it more even since some pay \$128 and some pay \$600, and probably the boathouses that are on land pay less since all the water was pumped out of Lake Ellsworth. Shanklin said that is the chance you take.

Mayor Powell said the agenda item is the criteria for the committee. Shanklin said he guessed we did not have the money to hire someone that can come in that does not know anyone and tell us what they are worth. Baxter said there is money in the economic development fund, it was not all spent on the school.

Devine said as far as what the land is worth, if you took all of the boathouses off and did not allow any to be put on the lake, how much would the land be worth. He said that is how you come up with the fair market value, if you are not going to allow any boathouses on there, it is not worth anything other than just a small recreation. Devine said he was looking at both sides. Mayor Powell said that is not what this item is about and this is the criteria for membership on the boathouse fee committee and stick with that.

Mayor Powell said there was an invitation that night for people to contact Mr. Shahan if they wanted to be on the committee. Kim Shahan, Parks & Recreation Director, said he received 13 phone calls and he had a handout showing those individuals; they range from \$160 to \$600 at all three sites. Ewing-Holmstrom suggested someone from the Chamber of Commerce be on the committee since they are involved in tourism and the lakes are considered tourism. Mayor Powell disagreed with that suggestion.

Moeller asked about limiting the committee to 15 and use the 13 who volunteered so far. Mayor Powell said that was too many. Moeller asked if two or three from each area would work. Shahan said the challenge here is that there are two opinions, and boathouse owners should be a part of it, but you need citizens who are not boathouse owners also as far as looking at the fair market value. Mayor Powell asked if Shanklin wanted to be on the committee. Shanklin said he should not be on it either and he thought they should hire someone that is an appraiser and not from Lawton, and the appraiser could see what they are being rented for now and what Mr. Waller is renting them for and that we are not getting anything for ours. Ewing-Holmstrom said we all admitted that none of us have the expertise to figure out what that land is worth.

Baxter said he understood the Corps of Engineers designated prices on certain lakes and suggested they be contacted. Mayor Powell said it is part of the federal government but they could be contacted.

MOVED by Shanklin, SECOND by Moeller, that Mr. Shahan check with Oklahoma City or Ardmore to see how they have come up with the value of their camp sites, boathouse sites, and any related recreation area and then report back to us.

Hanna suggested Waurika be contacted. Shanklin said they have miles of shoreline that we do not have but it would be acceptable to include them also.

Moeller said she would second the motion but there are two things that drive the market value, supply and demand, and the buyer and what he is willing to pay.

Mayor Powell asked for roll call. The Clerk asked if there would not be a committee. Mayor Powell said not right now. Shanklin asked if we will allow them to tell us what they will pay for it like we have with some of our water customers. Baxter said a man has turned in a request to speak form.

Jerry Thornton, 504 SW 75th Street, said that everything last week was compared to Kent Waller's property which is developed property, and you were looking at a \$500 per month boat stall that Waller built, Waller maintains the land and does everything with that; you are free to rent it for three months out of the year and then take your boat home. He said boathouse owners do not have that, they have a raw piece of property that ranges in size from 20 feet to what the City says is 40 feet. Thornton said the people he had talked with said they would like to have adequate representation on the committee so they are not ramrodded and all of the boathouse owners would like to have advance notice of any meeting of the committee so they can attend it and see what is going on.

Mayor Powell conferred with the City Attorney who advised the motion was not proper in light of the way the agenda item is worded. Shanklin said he could make it work if he wanted to.

MOTION by Ewing-Holmstrom, SECOND by Shanklin, to table this item until we get a report back from Kim Shahan. AYE: Haywood, Baxter, Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller. NAY: None. MOTION CARRIED.

#### ADDENDUM:

1. Consider approving an agreement for the sale of treated water outside the City limits to Goodyear Tire and Rubber Company and authorize the Mayor and City Clerk to execute the agreement, or in the alternative, approve a resolution establishing a rate effective January 1, 2003. Exhibits: None. (Resolution No. 02-228)

Mayor Powell said Moeller chaired the water committee and he asked her to address the item. Moeller said the addendum gives some background of the water committee which met six times, and this item concerns Goodyear only. She said several options are presented and Goodyear agreed on the first one and the committee agreed to present it for consideration; there is a five year contract and several other options. Moeller said the contract was the only thing the committee and Goodyear could reach a meeting of the minds over, and it was for 15 months at 76 cents per thousand gallons and continue negotiating; if that is not acceptable, there are other resolutions for consideration. Mayor Powell said the 15 month contract is retroactive back to July 1, 2002. Moeller said the resolutions show effective dates of January 1 and only the contract is retroactive.

Mayor Powell asked if the committee recommendation was to accept item seven. Devine said they simply agreed to propose it to the Council for approval or disapproval.

Vincent said if Council wants to consider the proposed 15 month agreement, the attorneys for Goodyear would like minor changes in paragraph seven and staff agrees with the changes. At the end of the first paragraph where it

says "this agreement may not be renewed or extended" Goodyear would like to add "except by agreement of the parties". In the next paragraph, third line, it says "in the event a multi-year agreement cannot be negotiated, the City shall proceed as provided in Section 22-112". Goodyear would like to strike and insert "the City states its intention to proceed as provided in Section 22-112".

Shanklin asked how we can negotiate with Goodyear before Fort Sill. Moeller said the committee felt you really could not compare the two, one is the federal government and there is latitude with Goodyear for economic development that is not the same as Fort Sill; they are not the same entity. Moeller said she understood that Fort Sill was given some criteria and negotiations are not complete with them.

Shanklin asked Moeller which alternative was preferred. Moeller said she was not making a recommendation but just bringing it to Council, and it was possible that Fort Sill could pay a higher rate than Goodyear, but that is not what this item is about.

Ewing-Holmstrom said the agreement shows a term of 15 months and a rate but attached to that are three different resolutions. Mayor Powell said those are not a party to the agreement, but it was what they had discussed in the meetings. Ewing-Holmstrom asked if they were to consider only the agreement. Mayor Powell said you can, it is wide open and the agreement was the only thing Goodyear agreed to. Moeller said that was as far as they could get in negotiations, the terms in the contract. Mayor Powell said it is 15 months, retroactive to July 1, 2002, at 76 cents per thousand. Mayor Powell said this is the biggest rate increase Goodyear has had in 18 years and the first time they will have had a contract in five years.

Moeller said the question is whether Council wants to accept this rate for 15 months and continue negotiating for another longer term contract or do something else and they had not been able to reach agreement on any of the other options. Shanklin asked how you would make up the \$150,000 income shown in the budget. Baker said this would not make up a whole lot of it.

Bass asked if they talked about Goodyear coming into the City limits. Russ McLelland, Goodyear, said they are studying it and he could not give an opinion at this point. He said we have been going through extensive negotiations with the water committee and both were taking a pretty hard line trying to protect their own interests but we had a meeting of the minds on the 15 month term and came up with some possibilities of some ideas that will help both sides in the long term. McLelland said if you go back some months, we agreed we would negotiate the water contract and he hoped we will continue to negotiate rather than having a unilateral decision made and that was his opinion.

MOVED by Ewing-Holmstrom, SECOND by Moeller, to approve the agreement as amended.

SUBSTITUTE MOTION by Bass, SECOND by Devine, to approve Resolution No. 02-228 setting the rates at 76 cents, then 88 cents, then \$1.00, then \$1.13, then \$1.27, as shown in Exhibit C.

Vincent said the rates would go up as stated each year but these would be rates and not a contract.

VOTE ON SUBSTITUTE MOTION: AYE: Baxter, Bass, Devine, Moeller, Haywood. NAY: Hanna, Ewing-Holmstrom, Shanklin. SUBSTITUTE MOTION CARRIED. (Note: Baxter, Shanklin and Haywood passed on initial roll call.)

Ewing-Holmstrom asked for further explanation and Mayor Powell said the resolution provides the rate for the coming year of 76 cents, the following year is 88 cents, and so forth for the coming years. Shanklin said the state, county and city have given millions to benefit Goodyear and Lawton will get back \$200,000 in five years, that's good negotiating.

#### BUSINESS ITEMS:

29. Pursuant to Section 307B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending lawsuit of Christina Avera vs. City of Lawton, Case No. CJ-2002-560, District Court of Comanche County, and if necessary, take appropriate action in open session.

30. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the acquisition of right of way for the Flower Mound Road Project (Lee to Gore) and the lawsuit styled The City of Lawton vs. Conner, Case Number CJ-2002-879, in the District Court of Comanche County, and take appropriate action in open session, if necessary.

MOVED by Baxter, SECOND by Devine, to convene in executive session as shown on the agenda and as recommended by the legal staff. AYE: Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

The Mayor and Council convened in executive session at 8:50 p.m. and reconvened in regular, open session at 8:55



p.m. with roll call reflecting all members present.

Vincent reported on Item 29 that executive session was held regarding Avera vs. City of Lawton as shown in the agenda item title. He said we discussed settlement possibilities and the request for settlement; staff recommends a motion to approve the acceptance of the offer of settlement in the amount of \$100,000, inclusive of all damages, including personal injury, property damage, fees and costs, including attorney fees.

MOVED by Devine, SECOND by Hanna, to approve as stated by the City Attorney. AYE: Bass, Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

Mayor Powell asked that the record show that he excused himself on Item 30. Vincent reported on Item 30 that executive session was held regarding City vs. Conner as shown in the agenda item title. Vincent said we discussed the proposal, offer of settlement in this condemnation case, and requested a motion to approve settlement in the amount of \$38,000 plus a one-inch water line across Flower Mound Road, City to provide a letter accepting donation of the right of way from Conners, Conners to provide a deed and remove all obstructions on or before January 6 and erect any necessary temporary fencing and gating.

MOVED by Devine, SECOND by Baxter, to approve as stated by the City Attorney. AYE: Hanna, Devine, Ewing-Holmstrom, Shanklin, Moeller, Haywood, Baxter. NAY: Bass. MOTION CARRIED.

#### REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Col. Puckett said he handed out a schedule of gate closures; all the gates around Fort Sill will have overhead covering installed in areas where cars are inspected.

Col. Puckett said there was an article in the Lawton Constitution outlining the raising of the basic assistance for housing for soldiers; we hope that does not translate into an increase in rent. He said historically in the Lawton-Fort Sill area, the allowances soldiers are given for housing to rent off post has been kept at 15% behind the average that each soldier by rank pays to rent or lease a home in Lawton. Col. Puckett said the increase that was in the paper is an increase the government is giving to close that gap in the Lawton area so that soldiers are being paid what they are being charged for rent. He said this is not an appeal but just a hope that this does not translate into an increase in rent or it would just perpetuate that gap, and it keeps the quality of life for the soldiers depressed just a little bit.

Haywood said last week he mentioned a free volunteer clinic which will be December 19 for the first 40 people and it starts at 6:00. He said they will also be held on January 2, 9, 16 and 30 and it is at the Salt of the Earth Ministry Church with Rev. Jackson.

Baxter wished everyone Merry Christmas and Happy New Year.

Shanklin said the election on Waurika will be held January 14 and asked if that was to raise the ad valorem to pay for that \$1.2 million; if they pass it, they will be raising their ad valorem and freeing up the \$1.2 million. Baker said it will free up \$1.2 million which is our debt financing. Shanklin said there will have to be a sell job because he would try and beat you. Baxter asked if Shanklin did not support that and Shanklin said no.

Shanklin said on Page 836, June 17, 2002, vote on substitute motion as amended in passing the budget, and it was Hanna, Devine, Ewing-Holmstrom, Moeller, Baxter, Bass voting yes, and Shanklin and Haywood voting no. Shanklin said he did not vote for the budget and he tried to tell them about the water. He said we just got \$13,000 from Goodyear and will not get any from Fort Sill.

Shanklin asked when they would figure the money expected per year on the resolution that was just passed on Goodyear so they can show the taxpayers how we negotiated and really looked after their assets. Baker said Mitchell passed that out this evening showing per year what the increase would be.

Moeller said she had received several calls on the Waurika vote and the voters are confused and it might make a good news story because people are trying to decide how to vote. She said she was looking forward to two weeks away and then being back at it in January and it will be another hard spring.

Devine said as far as the property around Lake Lawtonka being worth a lot, we should consider developing the west side for a parks and recreation area because it is prime land; people said they would be interest in leasing it and developing it into a recreation area. He wished everyone Happy New Year.

Ewing-Holmstrom agreed with Devine's suggestion to a point but said she was raised to respect Mother Earth and thought we had already destroyed so much of the land and lake area, and that was from her point of view. She reminded everyone to recycle their Christmas trees and to take the tinsel off first.

Bass wished everyone Merry Christmas and Happy New Year.

Hanna said Merry Christmas, Happy New Year and peace on earth to everybody. He said he read a comment in the paper this morning from an individual about how he wants to fire the Superintendent of Schools, their staff, the City Manager, Assistant City Manager, and the whole Council because we cannot pass a budget. Hanna said his suggestion to that individual and to those like him are if you have ways to get our budget down so we can save money without firing everybody, we would be more than happy to do it and if they wanted to come down and take his seat, he would relinquish it to them at the next meeting if they thought they could do a better job than he could.

Mayor Powell said he had been confronted several times by people saying they hear the City has no money but at the same time there are those who say the City has millions of dollars. He said he asked the City Manager to provide a print out, which has been distributed to Council, and Baker should explain that there are millions of dollars and what it is for. Baker said we listed all of the investments and what the purpose is and what the money is being held for; the vast majority of the \$13 million invested is for capital improvements programs, either the 1995 or 2000; quite a bit is invested on the sewer rehab program where we have money coming in monthly into that program and investing it to try to get some interest. Baker said rolling stock is shown, the \$3 generated per month, and we invest that before we spend it; almost all of it is related to capital improvement, although there are some like meter deposits, which are invested and at some point when a person closes their account we will pay that deposit back or use it to make up payments in arrears. Baker said we do not have millions of dollars for operating expenses laying somewhere.

Baker said the Finance Director is planning to give a briefing on investments at the first meeting in January. He said we will also ask for approval for an investment committee and once that is set up, that committee would help work on an investment policy that will be presented for Council approval. Baker said the City has had these things informally but not formally or not approved by the governing body. Mayor Powell asked if any of those funds can be used for the general fund. Baker said no, they cannot.

Mayor Powell said this coming Saturday at 9 a.m. is the Santa Shops Lawton Giveaway and someone will win \$10,000 in cash. You must be present to win. There are other prizes as well, such as a trip to London, a computer system, \$1,000 worth of gas, and others. He emphasized you must be present. Mayor Powell wished everyone a Merry Christmas and a safe New Year and a very prosperous 2003 and one of the things he would wish to everyone is that next year when we reassemble that we will do it in a professional manner extending courtesy to each and every person that we meet and deal with.

Moeller thanked Bass and Devine for serving on the water committee and there are many meetings ahead of them, it is long hours and hard work and they are doing the best they can.

Hanna thanked the Council for the Lawton Public School system. He said the Lawton Public School system is funded by the State and also by our ad valorem tax, so when our state funds go down, we go down, and the last couple of years they have been shorted over \$11 million roughly. Hanna said the money we give them is to help protect our investment over there.

There being no further business to consider, the meeting adjourned at 9:15 p.m. upon motion, second and roll call vote.